

ment as certainly as it appears. The author himself concedes that the economical perspective was never formulated strictly; safety and health issues have always played a role. On the other hand, he defines his ecological approach very openheartedly: Foresighted management of the environment and prudent use of natural resources in the interest of long-term and enduring exploitation are deemed to suffice. Precautious management of the environment are, however, already imperative in view of the clearly increased extent of interference and the realization that reciprocal and long-term effects can only be predicted to a limited degree. The fact that the environment has become a common concern of mankind and that generation transcending conceptions are being pursued does not imply that the environment is protected for its own sake.

However, motives for research or underlying principles are not that significant. It is more important to spell out the current state of international environmental law and to what extent and by what means it seeks to protect the environment. But in the book treaties—a primary source of international law—are remitted to the secondary level. Hohmann says that they mostly address only a specific problem and regularly follow general developments of the law. It seems that, as a consequence, the author does not consider them representative for the entire field. One would have to add that they also do not seem to support his generalizing hypothesis sufficiently. If one disregards these hypotheses, a treasure box remains containing references to global and regional treaties on the protection of all natural media and which informs about means and deficits of existing protective mechanisms. The book provides a comprehensive survey in this respect.

This also holds true for resolutions passed by international organizations (UN, UNEP, ECE, OECD, Council of Europe) or at conferences (Stockholm, Rio) and for the works of the International Law Association, the Institute de Droit International and the International Law Commission. But Hohmann does not stop here. He considers these to be not mere forerunners for conventions, despite citing many examples

where regulations passed as unbinding recommendations were eventually incorporated in international treaties. It is rather suggested that many of these proposals have had an astounding "juridical career" and have become—within a short period of time—customary law, in some cases even *ius cogens*. Such a general statement is indeed surprising. Justice is not being done to the debate on sources of international law over the past decades: Resolutions of international organizations or of state conferences—let alone documents passed by private bodies or the International Law Commission—cannot readily be considered as expressions of an *opinio iuris*, albeit they may produce rules that can be consented on. State practice cannot be briefly abandoned as a constitutive element of customary law and ultimately in reference to Ago (*diritto spontaneo*), Bin Cheng (instant customary law) and the necessity to create binding rules quickly. Even in the English version, supplemented in this respect, the discussion of this debate remains insufficient and the statements remain abstract.

A book that contains a good survey of the materials on international environmental law, which is to be handled with care in respect to its statements on the legal validity of regulations and on underlying principles.

Ulrich Fastenrath
University of Dresden
Faculty of Law

Merten, Detlev (ed.). Die Subsidiarität Europas. Berlin: Duncker & Humblot, 1994. Pp. 146. Index. DM 48; öS 375; sFr 48.

The principle of subsidiarity has captured widespread attention of scholars ever since its inclusion into the Maastricht Treaty. This is especially so among German scholars, who, in connection to the ongoing debate on German federalism, have often called for more regionalism in the European Community. And yet it still remains open how to define the principle's basic contents, especially when a proposed action cannot be sufficiently achieved by the Member States and can be better achieved

by the Community. Even more critical is the fact that subsidiarity only applies to areas which do not fall within the exclusive competence of the Community.

Since subsidiarity is such an open-ended concept, it seems more important to analyze who gets to decide on subsidiarity and what procedural safeguards could ensure its implementation. In addition, focusing on the way subsidiarity ties in with other principles of Community law, and its relation to specific areas of Community activities could contribute to giving the principle more meaning.

The book can be welcomed as an early treatment of fundamental aspects of subsidiarity. And yet its major weakness from today's perspective is its near exclusion of substantive questions. Even though all six of the articles deal with different aspects of subsidiarity, there are various repetitions as to the general nature and roots of subsidiarity, and only one of the articles examines subsidiarity in a substantive context (social policy). Useful is the book's annex which includes all of the major institutions' opinions on subsidiarity.

The first piece by Manfred Brunner offers insights into the day-to-day Euro-politics from his past at the Commission. Yet his treatment of subsidiarity as a European principle is undermined by some pseudo-scientific explanations of Community politics, such as his idea that some people have genetic predispositions that make them go into European politics in order to live their "obsession with power and regulating" (p. 15).

Torsten Stein, though critical of subsidiarity, concludes that the principle is one of law and not merely a political idea, and offers a good overview of the standard discussion on subsidiarity. He rightly underscores that the practical impact of subsidiarity will heavily rely on how it is implemented and controlled, and for instance suggests that a procedure of ex-ante court review could be used to ensure that the ECJ will engage in substantive review of subsidiarity concerns.

A descriptive review of the new German legislation on federal relations in Eu-

ropean matters (Art. 23 German Constitution) is offered by Georg-Berndt Oschatz. In similar vein, Jürgen Weiss relates subsidiarity to federalism by reviewing questions of contemporary Austrian federalism.

An interesting account of European social policy is given by Hans-Ulrich Reh, who is critical of the wide-spread "Euro-phobia" and convincingly underscores the importance of European framework legislation in social policy.

Finally, Detlef Merten offers a good background understanding of subsidiarity as a principle of constitutional law by drawing on its position in German constitutional law, its liberal character, and its implications for allocating competencies in a federal system.

*Dorothee Fischer-Appelt
Harvard Law School*

Skouris, Wassilios (ed.). *Advertising and Constitutional Rights in Europe*. Baden-Baden: Nomos Verlagsgesellschaft, 1994. DM 138

This book examines the relationship between advertising and constitutional rights in Europe. The aim was to conduct a study in comparative constitutional law with contributions from specialists of the countries of the European Union. Based on a questionnaire on the constitutional rights in the Member States on the one hand, and the relationship between them and advertising on the other, this book presents a comparative report as well as thirteen reports on the constitutional situations in the Member States (Luxembourg is missing). The best part of the book is the comparative part which is based mainly on the findings laid out in the various national reports but also on some additional sources. Just like the national reports, the comparative part follows the questionnaire.

*Christina Volquartz
Regensburg, Germany*